AO 106 (Rev. 5/85) Affidavit for Search Warrant

# United States District Court

FILED

Southern **DISTRICT OF** California

08 FEB 20 PM 5:08

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)
Cellco Partnership d/b/a Verizon Wireless
Attn: Court Compliance
180 Washington Valley Road
Bedminister, NJ 07921

**APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT**

BY: DEPUTY

CASE NUMBER: '08 MJ 0499

I, Amy Murphy being duly sworn depose and say:

I am a(n) Special Agent with the Naval Criminal Investigative Service and have reason to believe
Official Title

that ☐ on the person of or ☒ on the premises known as (name, description and/or location)
TSee Attachment A

in the District of New Jersey
there is now concealed a certain person or property, namely (describe the person or property)
Attachment B

which is (give alleged grounds for search and seizure under Rule 41(b) of the Federal Rules of Criminal Procedure)
evidence of a crime.

in violation of Title 18 United States Code, Section(s) 2422(b).
The facts to support the issuance of a Search Warrant are as follows:
See the attached affidavit of Agent Amy Murphy, NCIS (incorporated by reference herein).

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

[signature]
Signature of Affiant

Sworn to before me, and subscribed in my presence

2/20/08 at San Diego, CA
Date City and State

WILLIAM McCURINE, JR.
U.S. MAGISTRATE JUDGE [signature]
Name and Title of Judicial Officer Signature of Judicial Officer

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The facts to support the issuance of a Search Warrant are as follows:
See the attached affidavit of Agent Amy Murphy, NCIS (incorporated by reference herein).

Continued on the attached sheet and made a part hereof. ☒ Yes ☐ No

Signature of Affiant

Sworn to before me, and subscribed in my presence

______ at ______
Date City and State

Name and Title of Judicial Officer

Signature of Judicial Officer

**AFFIDAVIT IN SUPPORT OF APPLICATION FOR SEARCH WARRANT**

1. I, Amy J. Murphy, do on oath say and depose the following on this 20th day of February, 2008: that I am a Federal Agent employed by the Naval Criminal Investigative Service (NCIS) and have been so employed for six years. I am currently assigned to the General Crimes Division of the NCIS Southwest Field Office, and have been so assigned for about six years. I hold a Bachelors Degree in Criminal Justice from Chapman University and a Master Degree in Forensic Sciences from National University. My duties as an NCIS Special Agent include but are not limited to investigating crimes committed on or aboard Naval installations, aircraft, or vessels, committed by or against Navy or Marine Corps military personnel or civilian employees, or otherwise involving Department of the Navy assets, personnel, or facilities. During my career, I have investigated at least four hundred cases, including cases involving child pornography and other crimes related to the sexual abuse of children. I have assisted with the drafting and execution of numerous federal search warrants and have been the affiant on search warrants.

2. I am authorized to investigate violations of laws of the United States and I am a federal law enforcement officer with authority to apprehend members of the armed services subject to the Uniform Code of Military Justice (UCMJ) investigate and arrest civilians violating crimes with a U.S. Navy or U.S. Marine Corps connection. I have the authority to execute search warrants issued under the authority of the United States.

3. This affidavit is based upon information your Affiant has gained through training and experience, as well as upon information related to your Affiant by other individuals, including other law enforcement officers. Since this affidavit is being submitted for the limited purpose of securing a search warrant, your Affiant has not included each and every fact known concerning this

investigation but has set forth only the facts that your Affiant believes are necessary to establish probable cause to believe that evidence, described more thoroughly in Attachment B, relating to violations of Title 18, United States Code §§ 2422(b) are located at the premises set for the in Attachment A.

4. During the course of my duties, I have learned the following information through my own observations, discussions with the named witnesses, or by having read the reports of or talked with other NCIS agents, police officers, or other investigators who have spoken directly with the named witnesses or who observed the activities described herein.

5. This warrant is sought to search records being maintained by Cellco Partnership d/b/a Verizon Wireless pertaining to the cellular telephone account of Kenneth ROSIER, telephone number (727) 744-4286, more thoroughly described in Attachment A.

6. On February 13, 2007, NCIS commenced an investigation on Kenneth ROSIER on February 13, 2007, subsequent to receipt of information from Detective Bill CANET, Coronado Police Department, Coronado, CA. ROSIER is active-duty military, enlisted in the United States Navy, an E-3 Airman. Detective CANET provided information that ROSIER had passed a note to an 8th grade female who was at the Coronado library. The note directed a minor female to contact ROSIER via his cell phone through a call or text message. The victim told her mother about the incident who subsequently notified CPD who then called ROSIER and advised him not to have contact with the minor victim. The mother stated ROSIER was often in the library and staring continually at her daughter.

7. Utilizing the information above as background, I began to act in an undercover capacity as the 13 year-old girl victim and began text message conversations with ROSIER in order to determine his

intentions. ROSIER subsequently engaged me in sexually explicit text and email conversations and indicated in the internet chat logs, "I can't wait to kiss those 13yr old lips."

8. On February 21, 2007, I requested from the director of NCIS and was granted oral/wire intercept authority to engage ROSIER in telephonic conversation utilizing a female UCA. Through the use of text messaging, AOL chat, and telephonic conversation, ROSIER solicited me to engage in sexual acts. At approximately 1500 on February 22, 2007, NCIS Special Agents arrested ROSIER at the Town and Country Hotel; Hotel Circle, San Diego, CA during his attempted meeting with what he thought was the thirteen year old girl. ROSIER subsequently provided a sworn statement regarding his involvement in the above captioned investigation and admitted culpability in attempting to engage in sexual acts with a minor. He also provided authorization for the search and seizure of his personal items, including his computer. ROSIER was not initially confined.

9. Forensic analysis of ROSIER's cell phone disclosed numerous videos of an unknown female masturbating and a male individual identified as ROSIER masturbating utilizing his cell phone as a camera. Analysis of ROSIER's computer has disclosed numerous images of child erotica. Further analysis is needed.

10. Administrative subpoenas issued for ROSIER's cellular telephone records revealed several numbers that he had called frequently. As a result of tracking down the subscribers of those telephone numbers, NCIS has located three additional minors have been identified as having contact with ROSIER Interviews with the minors revealed that ROSIER sent text messages to the minors expressing his desire to engage in sexual acts with them on numerous occasions. One of the minors admitted having physical intimacy with ROSIER as late as September 2007, subsequent to the

initiation of the first investigation. As a result of this information, ROSIER has been placed in confinement.

11. After ROSIER was placed in confinement on November 10, 2007, I seized his cellular telephone. I viewed numerous text messages that were sent and received on the cell phone stating to ROSIER's wife that they may be here to get me alluding to the fact federal authorities were present in the room and he may be placed in confinement (the brig). All text messages were erased by ROSIER prior to November 10, 2007, therefore we believe he attempted to destroy evidence of his contact with the underage victims. ROSIER'S wife stated in a subsequent interview with me that her husband, Kenneth ROSIER was aware he might be "locked up" approximately one week prior to November 10, 2007.

12. NCIS Special Agent Christiana Cooper interviewed three of the alleged minor victims last week in St. Petersburg, Florida and it is believed one of the victims contacted ROSIER and advised him that federal authorities were asking questions about him therefore advising him of the pending confinement. The only individuals who knew that victims were being interviewed were NCIS Special Agents, the military prosecutor and the alleged victims in Florida. NCIS Agents believe ROSIER deleted his e-mail/text message content with the three victims in Florida upon being notified by one of them law enforcement authorities were conducting interviews regarding his interactions with the underage minors.

13. Investigation has revealed that the service provider for ROSIER's cellular telephone is Verizon Wireless. On November 9, 2007, I sent a preservation letter to Verizon Wireless, asking for preservation of ASMS or Short Message System messages. The date preservation began was November 10, 2007.

14. Based on my training and experience, I know people who commit crimes related to the sexual abuse of children will often keep records of illegal activities and interactions with children stored on their computers, digital organizers, and personal telephones, as well as the telephone numbers and names of their family members, friends, and the victims of their crimes. I also know that cellular telephones store various data such as the type, number, and duration of incoming, outgoing, attempted or missed telephone calls and/or text messages. I also know that photographs, data, and audio and video recordings may also be sent from, received by, or stored on some cellular telephones.

15. Based on the aforementioned information and investigation, I believe that there is probable cause to believe that in the SMS content of ROSIER's cellular telephone, (727) 444-4386, being maintained by Cellco Partnership d/b/a Verizon Wireless, there will be found evidence of ROSIER's illegal contact with children in violation with federal law.

Amy Murphy
Special Agent
Naval Criminal Investigative Service

Subscribed and Sworn to
before me this 20th day of
February, 2008.

UNITED STATES MAGISTRATE JUDGE

**Attachment A**

The text message content, e-mail content, text messages data, sent and received messages on the personal cellular telephone with assigned telephone number (727) 744-4286, with service located at Cellco Partnership d/b/a Verizon Wireless, Attn: Court Order Compliance, 180 Bedminster, NJ 07921 from October 15,2007 to present.

**Attachment B**

The following property, information, and data, to wit: All address books, records of any and all incoming, outgoing, missed, or any other telephone calls involving the telephone described in Attachment A; text messages received by, sent by, attempted, or any other partial or whole text messages involving the telephone described in Attachment A; all audio recordings, photographs, and video recordings sent to, received by, stored in, or deleted from the telephone described in Attachment A; or any other audio, photographic, or video data stored in or involving the telephone described in Attachment A; The text message content, e-mail content, text messages data, sent and received messages on the personal cellular telephone with assigned telephone number (727) 744-4286 to include items stored in Verizon's database not found on the phone itself. Items should include SMS/text message contents from October 15, 2007 to present date.

This search and seizure may be conducted on November 14, 2007, and subsequent days as necessary to complete the computer forensic examination of the item(s) described in Attachment A.